

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRANDON DELGARITO,

Plaintiff,

v.

No. 24-cv-0408-MIS-DLM

FNU WILKENS, *et al.*,

Defendants.


ORDER OF DISMISSAL

This matter is before the Court following Plaintiff Brandon Delgarito's failure to cure deficiencies as directed. Plaintiff was incarcerated when this case was filed and is proceeding *pro se*. He initiated this case by filing a Letter-Pleading Under 42 U.S.C. § 1983. *See* ECF No. 1. However, Plaintiff did not prepay the \$405 civil filing fee or file a motion to proceed *in forma pauperis*, as required by 28 U.S.C. § 1915. Several mailings to Plaintiff were also recently returned as undeliverable, and he did not provide an updated address as required by local rule. *See* D.N.M.LR-Civ. 83.6 ("All ... parties appearing *pro se* have a continuing duty to notify the Clerk, in writing, of any change in their ... mailing addresses"). By Order entered July 12, 2024, the Court directed Plaintiff to cure these deficiencies within thirty days. *See* ECF No. 4. The Order warns that the failure to timely comply may result in dismissal of this case without further notice.

The deadline to address the civil filing fee and provide updated contact information was August 12, 2024. Plaintiff did not comply or otherwise respond to the Order, which was also returned as undeliverable. Accordingly, the Court will dismiss this action for failure to prosecute

and comply with orders pursuant to Fed. R. Civ. P. 41(b). *See Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003) (“Rule 41(b) ... has long been interpreted to permit courts to dismiss actions *sua sponte* for a plaintiff’s failure to prosecute or comply with the ... court’s orders.”). The dismissal is without prejudice to refiling, and it does not count as a “strike” for purposes of the three-strike rule in 28 U.S.C. § 1915(g). *See Carbajal v. McCann*, 808 F. App’x 620, 629 (10th Cir. 2020) (addressing the three-strike rule and distinguishing procedural dismissals under Rule 41(b) from screening dismissals for failure to state a claim).

IT IS ORDERED that Plaintiff Brandon Delgarito’s Letter-Pleading Under 42 U.S.C. § 1983 (**ECF No. 1**) is **DISMISSED without prejudice**; and the Court will enter a separate judgment closing the civil case.



MARGARET STRICKLAND
UNITED STATES DISTRICT JUDGE